

## CHAPTER 221.

[H. B. 282.]

## UNFAIR PRACTICES ACT.

AN ACT relating to unfair competition, discrimination and practices in connection with the sale of certain articles and commodities and the rendering of certain services; defining, prohibiting and making the same unlawful; providing for civil and criminal actions in connection therewith; and prescribing penalties.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. As used in this act, words and terms are defined as follows: Definitions.

“Person” includes any person, firm, association, organization, partnership, business trust, company, corporation or municipal or other public corporation; “Person.”

“Sell” includes selling, offering for sale or advertising for sale; “Sell.”

“Give” includes giving, offering to give or advertising for the intent to give; “Give.”

“Article or produce” includes any article, product, commodity, thing of value, service or output of a service trade; “Article or produce.”

“Cost” has its usual meaning and in addition as applied to production includes the cost of raw materials, labor and all overhead expenses of the producer, and as applied to distribution means the invoice cost or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor; “Cost.”

“Cost of doing business” or “overhead expense” means all costs of doing business incurred in the conduct of such business and must include without limitation the following items of expense: Labor (including salaries of executives and officers), rent, depreciation, selling cost, maintenance of equip- “Overhead expense.”

ment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising;

"Loss leader."

"Loss leader" means any article or product sold at less than cost as herein defined to induce, promote or encourage, the purchase of other merchandise, or which may have the tendency or capacity to mislead or deceive purchasers or prospective purchasers, or which diverts trade from or otherwise injures competitors;

"Vendor."

"Vendor," in addition to its usual meaning, includes any person who performs work upon, renovates, alters or improves any personal property belonging to another person.

"Ordinary channels of trade."

"Ordinary channels of trade" shall mean those ordinary, regular and daily transactions in the mercantile trade whereby title to an article or product, in no way damaged or deteriorated, is transferred from one person to another, and shall not include sales of bankrupt stocks, closeout goods, dents, sales of goods bought from a business or merchant retiring from business, fire sales and sales of damaged or deteriorated goods, which damage or deterioration results from any cause whatsoever: *Provided*, That this last listing herein shall not be held to be all inclusive but as an example only.

Locality discrimination unlawful.

SEC. 2. It shall be unlawful for any person, engaged in the production, manufacture, distribution or sale of any article or product of general use or consumption, with the intent to destroy the competition of any regular established dealer in such article or product, or to prevent the competition of any person, who in good faith, intends and attempts to become such dealer, to discriminate between different sections of the same community, city, town or village in this state, by selling or furnishing such article or product at a lower price in one such section than in another: *Provided*, That nothing herein contained shall prevent differentials which make allow-

ances for differences, if any, in the grade, quality or quantity when based and justified in the cost of manufacture, sale or delivery, or the actual cost of transportation from the point of production if a raw product or commodity, or from the point of manufacture if a manufactured product or commodity, or from the point of shipment to the point of destination: *Provided further*, That nothing herein contained shall prevent a selection of customers or a functional classification by any person of any customer as broker, jobber, wholesaler or retailer or a differential in price for any article or product as between any customers in different functional classifications. Motion picture films when licensed for exhibition to motion picture houses shall not be deemed to be an article or product under this act. Neither shall anything in this act be deemed to apply to any service, article or product for which rates are established under the jurisdiction of the Department of Public Service of the State of Washington and which are sold or furnished by any public utility corporation, or installation and repair services rendered in connection with any services, article or products; or to any service, article or product sold or furnished by a publicly owned public utility and upon which the rates would have been established under the jurisdiction of the Department of Public Service of the State of Washington if such service, article or product had been sold or furnished by a public utility corporation, or installation and repair services rendered in connection with any such service, articles or products.

Exemptions.

The inhibition [inhibition] of this act against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section: *Provided, however*, That

nothing in this section shall be construed to prohibit the meeting in good faith of a legal competitive price.

Violations of provisions of act.

SEC. 3. Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this act, assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts.

In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts.

Unlawful to give away article or sell as "loss leader."

SEC. 4. It shall be unlawful for any person engaged in business within this state to sell any article or product at less than the cost thereof to such vendor, or give away any article or product, for the purpose of injuring competitors or destroying competition, or to use any article or product as a "loss leader," or in connection with any sale to make or give, or to offer to make or give, any special or secret rebate, payment, allowance, refund, commission or unearned discount, whether in the form of money or otherwise, or to secretly extend to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, or to make or enter into any collateral contract or device of any nature, whereby a sale below cost is effected, to the injury of a competitor, and where the same destroys or tends to destroy competition.

Merchandise purchased at forced sale.

SEC. 5. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of said article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of

said article or product replaced through the ordinary channels of trade, unless said article or product is kept separate from goods purchased in the ordinary channels of trade and unless said article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

SEC. 6. In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts; and in any civil or criminal proceeding under this act, where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act; and in any such action proof of one or more acts of selling or giving away any article or product below cost or at discriminatory prices, together with proof of the injurious effect of such acts, shall be presumptive evidence of the purpose or intent to injure competitors or destroy competition; and in any such action where it is alleged and shown that the person complained against is selling, below his cost of doing business, and said person is including labor at less than the prevailing wage scale in the trade in which such person is engaged for the locality or vicinity in which he is doing business, evidence of such prevailing wage scale shall be admissible to prove the intent or purpose of such person to violate the pro-

Civil or  
criminal  
proceeding.

visions of this act; or in any such action where it appears that persons are employed or performing services without compensation for any person so complained against, such services shall be charged as an expense of the business in which rendered and at the rate of the wage for the services rendered prevailing at the time of the service at the place where rendered.

Exemptions from act.

SEC. 7. The provisions of this act shall not apply to any sale made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such article or product and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation: *Provided*, Notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article or product, in the same locality or trade area, and in the ordinary channels of trade as herein defined; or in an endeavor made in good faith by a manufacturer, selling an article or product of his manufacture, in a transaction and sale to a wholesaler or retailer for resale to meet the legal prices of a competitor selling the same or a similar or comparable article or product, in the same locality or trade area and in the ordinary channels of trade as herein defined.

Illegal contracts.

SEC. 8. Any contract, express or implied, made by any person in violation of any of the provisions of this act is declared to be an illegal contract and no recovery thereon shall be had.

SEC. 9. Any person may maintain an action to

enjoin a continuance of any act or acts in violation of any of the provisions of this act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this act, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him. Commencement, pendency or conclusion of a civil action for injunction and/or damages shall not affect criminal liability.

Injunction  
proceedings.

SEC. 10. Violation of the provisions of this act shall constitute a misdemeanor; and any person, whether as principal, agent, officer or director, for himself, or for another person, or for any firm or corporation, or any corporation, who or which shall violate any of the provisions of this act shall be guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six (6) months or by both said fine and imprisonment in the discretion of the court; and any criminal action shall not affect the right of any person to bring a civil action under section 9.

Fine and  
imprison-  
ment.

SEC. 11. Solicitation by, or collusion or joint participation between any wholesaler, manufacturer, distributor, jobber, contractor, broker, or retailer to violate any of the provisions of this act or the use of any threat, intimidation or boycott to effectuate the violation of the act shall make all persons participating in such solicitation, collusion or joint participation subject to civil or criminal liability under this act.

Collusion.

Presumptive  
evidence.

SEC. 12. In any civil or criminal action proof of average over-all cost of doing business for any particular inventory period when added to the cost of production of each article or product, as to a producer, or invoice or replacement cost, whichever is lower, of each article or product, as to a distributor, shall be presumptive evidence of cost, and proof of transportation tariffs when fixed and approved by the Department of Public Service of the State of Washington shall be presumptive evidence of delivery cost, as to any article or product involved in any such action.

Institution  
of actions.

SEC. 13. The Attorney General, in any county in which the Superior Court has jurisdiction, and the Prosecuting Attorneys, in their respective counties in which the Superior Court has jurisdiction, shall have power to institute and maintain an action in the name of the State of Washington to restrain and enjoin any person from performing or continuing the performance of any act or conduct which is prohibited herein.

Partial  
invalidity.

SEC. 14. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The Legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared unconstitutional.

Purpose  
of act.

SEC. 15. The Legislature declares that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be



liberally construed that its beneficial purposes may be subserved.

SEC. 16. This act shall be known and designated as the "Unfair Practices Act."

Passed the House March 8, 1939.

Passed the Senate March 6, 1939.

Approved by the Governor March 20, 1939.

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## CHAPTER 222.

[H. B. 324.]

### APPLES.

AN ACT relating to apples; providing for the sale and distribution thereof and the prevention of frauds in such sale and distribution; providing for grades and labels and the issuance of permits; levying assessments and fees and providing for their collection; prescribing penalties; and declaring that this act shall take effect immediately.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. It shall be unlawful for any person, firm, corporation, trust, association, co-operative or other business unit or device to pack, ship or sell apples unless such apples are sold, packed and graded in compliance with the general rules and regulations made, adopted and promulgated from time to time by the Director of Agriculture pursuant to section 4 of chapter 27 of the Laws of 1931 (section 2855 of Remington's Revised Statutes; section 2723 of Pierce's Code). Within sixty (60) days after the taking effect of this act general rules and regulations shall be adopted and promulgated defining and establishing the following grades:

Compliance with rules and regulations.

Grades.

- (a) Extra fancy
- (b) Fancy
- (c) C grade
- (d) Culls
- (e) Infested culls.